

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
May 14, 2003

ITEM: 11

SUBJECT: PUBLIC HEARING: A public hearing may be held regarding the issuance of Cleanup and Abatement Order No. R9-2003-0158 to Pioneer Builders Inc. for alleged violations of the California Water Code at a residential development construction site. (Tentative Tract Map No. 16197) located on Camino Capistrano in the City of Dana Point (Jeremy Haas)

PURPOSE: Pioneer Builders has contested the issuance of Cleanup and Abatement Order and requested the item be placed on the Board agenda. The purpose of this item is for the Regional Board to receive testimony regarding the Order. The Regional Board may affirm, amend, or rescind the Order.

PUBLIC NOTICE: The public was notified of this item in the agenda notice for today's meeting, which was mailed on April 25, 2003.

DISCUSSION: On April 11, 2003 the Executive Officer issued Cleanup and Abatement Order No. R9-2003-158 to Pioneer Builders. Cited violations of the Basin Plan Waste Discharge Prohibitions and the California Water Code pertained to failure to file a report of waste discharge and 401 Water Quality Certification application with the Regional Board prior the discharge of wastes/pollutants to waters of the United States/waters of the state in violation of CWC §13260 and §13376 and failure to comply with requirements of the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ in violation of CWC §13376. Two Notices of Violation were previously issued for the above violations.

Enclosed in today's agenda is a technical report in support of the issuance of the Cleanup and Abatement Order. The Cleanup and Abatement Order requires the removal of material from the on-site waters and the restoration of beneficial uses of waters of the State by restoration of 0.066 acres of wetlands in the area where wetlands existed prior to the fill.

In response to the CAO, Pioneer Builders submitted an application for Section 401 water quality certification that contained a proposed habitat mitigation plan for a combination of on-site and off-site mitigation. Proposed on-site mitigation is for 0.04 acres of wetlands. This proposal, however, is not consistent with the CAO directive requiring the restoration of 0.066 acres of wetlands.

On April 30, 2003, Pioneer Builders met with members of the Northern Watershed Protection Unit and presented a revised on-site mitigation plan to restore 0.066 acres of wetland on-site. In expanding the on-site proposed wetland by 0.026 acre, the developer has reduced the size of two lots. This plan is not exactly consistent with the CAO because it would restore the wetland in a slightly different configuration than the former wetland.

Pioneer Builders has indicated that removal of the fill and restoration in the same location, as required by the CAO, would be economically infeasible due to the loss of two of the eight lots. Pioneer Builders also stated that the goal of their revised 0.066-acre plan would be to restore the lost water quality functions and improve habitat over pre-existing conditions because the wetland would be planted with vegetation.

At issue is whether the Board will accept the developer's modified proposal for on-site restoration or to require removal of fill and restoration of the on-site wetlands in the pre-existing location.

There has not been sufficient time to assess the modified proposal. Assessment of the latest proposal should be completed prior to today's meeting.

LEGAL CONCERNS: None

SUPPORTING
DOCUMENTS:

1. Cleanup and Abatement Order R9-2003-158
2. Technical Report
3. Letter to the Regional Board submitted by the Dana Point Wetlands Protection Association

RECOMMENDATION: A recommendation will be provided following discussion of this item.